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On Stalking

Since everybody and their brother, it seems these days, is throwing around the term “stalking” whenever someone says or posts something they don’t like, it seems a primer is in order.

- Disclaimer: I am not a lawyer. This post is out of my notes and understanding from studying the law about STALKING and HARASSMENT and CYBER-STALKING – only.

.

Let’s do a couple U.S. state law comparisons here, East and West.

Georgia stalking law:

> A person commits the offense of stalking when he or she follows, places under surveillance, or contacts another person at or about a place or places without the consent of the other person for the purpose of harassing and intimidating the other person.

The key phrase is “without the consent of the other person”.

If you put up something publicly on Twitter, Instagram, Youtube, etc YOU ARE GIVING YOUR CONSENT for it to be viewed and commented upon.

Some might call that *implied* consent which means:

> Implied consent, compared to express consent (where consent is directly and clearly given with explicit words),

- March 2017
- April 2016
- December 2015
- August 2015
- June 2012
- April 2011

> is the agreement given by a person's action (even just a gesture) or inaction, or can be inferred from certain circumstances by any reasonable person.

Next part of Georgia law:

> For the purposes of this article, the term "harassing and intimidating" means a knowing and willful course of conduct directed at a specific person which causes emotional distress by placing such person in reasonable fear for such person's safety or the safety of a member of his or her immediate family, by establishing a pattern of harassing and intimidating behavior, and which serves no legitimate purpose.

Key phrase modifying everything else (bolding is mine):

> causes emotional distress **by placing** such person in reasonable fear for such person's safety or the safety of a member of his or her immediate family.

Key words: REASONABLE FEAR and SAFETY.

Having your words,videos, images, or your research countered or commented upon, does not equate to "reasonable fear" for your safety or the safety of your immediate family.

Stalking laws require proof that the victim's fearful reaction WAS REASONABLE.

If someone has (or fakes having) a hypersensitive reaction that does not meet the elements of a "crime", like being upset or "uncomfortable", **even if** it was over a rude and nasty comment? That DOES NOT RISE TO THE LEVEL of

reasonably fearing for one's safety.

Therefore, I posit that saying someone is "STALKING" and "HARASSING" you because they say or point out something YOU DON'T LIKE about your own publicly available posted content? Begs the illustrative rhetorical question:

> **If you're so "afraid" of and "feel uncomfortable" about push-back of any kind, what are you doing posting on social media?**

Second key phrase:

> and which serves no legitimate purpose.

If you put out things in full public view on social media, people can respond with their views. That is a legitimate purpose on both ends.

– – –

Now let's go West and look at California state laws on this.

California.

Legal References:

California Senate Bill 1796, passed in 1998.

> ("(3) Existing law prohibits stalking, which is defined as the willful, malicious, and repeated following or harassing of another, where a credible threat, as defined, has been communicated to the victim with the intent of placing the

> victim in reasonable fear for his or her safety. This bill would expand the definition of “credible threat” to include threats communicated through the use of an electronic communication device, including telephones, cellular phones, computers, video recorders, fax machines, and pagers [in effect, calling this type of stalking California cyberstalking]. This bill would also incorporate the definition of “electronic communication” used in a specified provision of federal law.”)

California Penal Code 646.9 PC stalking.

> (“(a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking…”)

Key phrases modifying the whole thing –

- willfully, maliciously and repeatedly
- makes a credible threat
- intent to place that person in reasonable fear

Much like Georgia, there’s that “reasonable fear” aspect again.

Key words –

- Harassment
- **Credible** Threat

Harassment is actually defined in the law itself. It says:

> (e) For the purposes of this section, “harasses” means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose.

Key phrase modifying the rest:

- knowing and willful course of conduct

Course of conduct being also key, it is defined in the law as well:

> (f) For the purposes of this section, “course of conduct” means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct.”

Continuity of Purpose to do harassment as defined in e:

> (e) For the purposes of this section, “harasses” means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose.

Key phrase modifying:

- serves no legitimate purpose

An obvious example given of legitimate purpose can be found in the law definition given for “course of conduct”, bolded below –

> (f) For the purposes of this section, “course of conduct” means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. **Constitutionally protected activity is not included within the meaning of “course of conduct.”**

Lawyers write (some excellent examples given) that to be guilty of Stalking under CPC §646.9(a), the prosecution must prove that:

- You harassed or repeatedly followed another person; AND,
- You made a threat placing the person in fear for his or her safety or for the safety of family.

Note the AND. Has to be BOTH or you got nada, basically.

Put another way by this legal firm, the prosecutor must prove that you –

> 1. maliciously or willfully harassed another person, and
> 2. made a credible threat against that person,
> 3. placing that individual in reasonable fear for his/her safety or the safety of his/her family,
> 4. which was communicated by means of the Internet or another “electronic communication device”

Examples given –

> Let’s take, for example, a “credible threat”. **If your threat was so ridiculous or grandiose** that you couldn’t possibly execute it, you can’t be convicted of cyberstalking. For example, if John threatens “that he will

> have aliens come down and carry Sue away if she doesn't marry him", that wouldn't qualify as a credible threat.
>
> Similarly, **if you didn't intend** to place the recipient of your actions in fear, you must be acquitted of Internet stalking. Repeatedly professing love through a series of e-mails…**without some type of accompanying threat**… does not amount to cyberstalking.

The law firm site also made this interesting point about FALSE accusations of stalking:

> False accusations typically present themselves in two forms: (1) where a person honestly (but mistakenly) believes that the accused is the person responsible for committing a crime, and (2) where an individual knowingly makes false accusations that someone committed a crime.

Point number 2 is in fact a crime in and of itself, as well as defamtion per se. A good reason you don't want to so easily be throwing around false accusations, let alone false reports to the police, about stalking as you may end up *yourself* in jail, or with other fines and penalties.

You begin to see the problem with posting things publicly, then accusing others of stalking just because they looked AT what you posted publicly and/or commented or even took umbrage with it?

Yea. Not a real smart takeaway.

However, there is one more aspect to learn about here, and

that is that **indirect** electronic harassment under PC 653.2 is distinct from **direct** electronic harassment or cyberstalking under Penal Code 646.9 PC.

California code 653.2 —

> (a) Every person who, with intent to place another person in reasonable fear for his or her safety, or the safety of the other person's immediate family, by means of an electronic communication device, and without consent of the other person, and for the purpose of imminently causing that other person unwanted physical contact, injury, or harassment, by a third party, electronically distributes, publishes, e-mails, hyperlinks, or makes available for downloading, personal identifying information, including, but not limited to, a digital image of another person, or an electronic message of a harassing nature about another person, which would be likely to incite or produce that unlawful action, is guilty of a misdemeanor punishable by up to one year in a county jail, by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.
>
> (b) For purposes of this section, "electronic communication device" includes, but is not limited to, telephones, cell phones, computers, Internet Web pages or sites, Internet phones, hybrid cellular/Internet/wireless devices, personal digital assistants (PDAs), video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term is defined in Section 2510(12) of Title 18 of the United

States Code.

(c) For purposes of this section, the following terms apply:

(1) “Harassment” means a knowing and willful course of conduct directed at a specific person that a reasonable person would consider as seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing the person and that serves no legitimate purpose.

(2) “Of a harassing nature” means of a nature that a reasonable person would consider as seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing of the person and that serves no legitimate purpose.

The word seriously is used repeatedly, this means not just over-reaction on your part or getting your panties in a twist about something. That level of qualification means you better be able to prove a: that it was REASONABLE to be viewed as seriously…all of the above and b: SERVES NO LEGITIMATE PURPOSE.

This law firm points out –

> The law says that it is illegal for a person to electronically distribute personal information about someone (i.e., photos, videos, or messages) to **cause a third party** to make unwanted contact, injury, or harassment to the targeted person. In other words, one person can’t post or send information about someone else to make other people engage in malicious behavior against that individual. For the conduct to violate the law, the initiator

> of the original communication must have acted **with the intent to** cause the targeted person to **reasonably fear** for the safety of themselves or their immediate family.

Please note, this website has quite a comprehensive look at other forms of harassment (as per California law) including revenge porn, etc. etc.

Finally, we have the somewhat generic (and old, it's from 1999) report from the U.S. Attorney General on the topic, which itself doesn't stray much from what I've just taken you on a East/West example State laws tour of.

> Cyberstalking includes the use of the Internet, e-mail, or other electronic communications devices to talk another person through harassing or threatening behavior. Most stalking laws require that the perpetrator make a credible threat of violence against the victim; others include threats against the victim's family; still others require only that the alleged stalker's conduct constitute an implied threat.

The moral of the story here is, you can't cry "Harassment!!!" or "Stalking!" just because you don't like or feel upset or uncomfortable with what someone says or does with or about your made public material, sites, and so on and expect to be taken seriously.

In fact, IMO it understandably will bring discerning attention on you for why are you LYING about crimes that aren't crimes?

Do better out there.

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